intended to be excluded from the operation of the Act."

Where, as in the present instance, the business is a complex one and comprises not one "primary object and pursuit" but several objects, namely, shipping, warehousing, rubber dealing and rubber growing, it is plain that the *dictum* of McCardie J. cannot, from the nature of the case, be applied without modification. If an analogy is sought between the case of *Edgelow v. McElwee* and the present case, it would be that the lending of money to persons storing goods in the appellants' godowns was no more incidental to the activities of the warehouse business than the lending of money by the plaintiff in *Edgelow v. McElwee* was incidental to his professional work as a solicitor. But as I have already pointed out, the evidence establishes that the object of lending money to persons storing goods in the appellants' godowns was to increase, or at least, to maintain the godown department's business and therefore, the true analogy would be rather with the case given by way of illustration by Phillimore J. in *Furber v. Fieldings Ltd., supra,* where a solicitor lends money, not merely or primarily for the interest on the money, but for the purpose of maintaining or increasing his professional business and the resultant professional fees.

A more helpful *dictum*, in my opinion, than that of McCardie J., because it is more general in its application, is the *dictum* of Farwell J. in *Litchfield v. Dreyfus.*[4] "The Act," he states, "was intended to apply only to persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of another business." This *dictum* was approved by Ridley J. in *Newman v. Oughton*[5] who, after reading Farwell J's statement of the law, added, "I think that Lord Loreburn L.C. when discussing in *Kirkwood v. Gadd*[6] the meaning of carrying on business, intended to adopt the language of Farwell J. which I have read." In the present instance the appellants carried on the perfectly legitimate business of godown keepers and as incidental to that business, they advanced money to customers on the security of the goods stored in their godowns and therefore, in my view the *dictum* of Farwell J., approved by the Lord Chancellor in *Kirkwood v. Gadd, supra,* and by Ridley J. in *Newman v. Oughton, supra,* is precisely applicable to the facts of this case. Accordingly, even if it be correct to say, as Lord MacNaghten thought it was, that the authorities on the construction of the Moneylenders Act are hampering, I am of the opinion that when they are appreciated at their true value, they support the appellants' contention in this case. For these reasons I would allow the appeal. The respondent must pay the costs of the appeal and of the proceedings in the Court below.

Tan Ah Tah J.: — I agree.

Chua J.: — I have had the opportunity of reading the judgment of the learned President of the Court with which I concur and have nothing to add.

Appeal allowed.

Solicitors: *Rodyk & Davidson; Philip Hoalim & Co.*

MALAYAN WATCH TRADERS v. CHEONG KAM WOON trading as SEE SUN WATCH CO.

[O.C.J. (Rigby J.) January 13, 1958]

[Penang — Civil Suit No. 13 of 1956]

Practice and Procedure — Action for balance due in respect of goods delivered — Counter-claim by way of set-off for goods returned — Onus of proof.

The plaintiffs claimed from the defendant a sum of $52,887.50 as balance due to them in respect of goods, to wit, watches sold and delivered by them to the defendant between March 26, 1953 and November 8, 1954. In his defence the defendant admitted the debt to the extent of $7,149.60, but claimed by way of set-off that the plaintiffs had failed to credit him to the extent of $45,738 in respect of two consignments of watches returned by him to the plaintiffs.

On the application of the plaintiffs the Registrar accordingly ordered that judgment be entered for the amount admitted to be owing, and gave leave to the defendant to defend the residue of the plaintiffs' claim.

Held: the burden of proving the return of the watches rested upon the defendant, and in the circumstances of the case he has failed to discharge that burden of proof.

ACTION.

H. G. Hanbury-Sparrow for the plaintiffs.

Chew Choon Poon for the defendant.

Cur. Adv. Vult.

Rigby, J.: — In this action the plaintiff firm claimed the sum of $52,887.50 as the balance due to them by the defendant in respect of goods, to wit, watches sold and delivered by them to the defendant between 26th March, 1953, and the 8th November, 1954.

The defendant, by his defence, admitted the debt to the extent of $7,149.60, but claimed by way of set-off that the plaintiff firm had failed

to credit him to the extent of $45,738 in respect of two consignments of watches returned by him to the plaintiff firm.

On the application of the plaintiff firm the Registrar accordingly ordered that judgment be entered for the amount admitted to be owing, and gave leave to the defendant to defend the residue of the plaintiffs' claim of $45,738.

Since the defendant by his pleadings admitted the receipt of the watches to the total value of the amount claimed, $52,887.50, but claimed that he had returned the two consignments to the total value of $45,738, the onus of proving that he had, in fact, so returned them lay upon him.

The defendant at all material times was a dealer in watches carrying on business in Campbell Street, Penang. The plaintiff firm operated in and from Singapore.

The case for the defendant is that from 1936 to the end of 1954, he had been buying watches on credit from a man named S. E. Sherida, whom he knew as a watch dealer and as the principal of Malayan Watch Traders, Singapore.

The defendant was first doing business on a small scale. In 1953, however, Sherida approached him and asked him to enlarge his business saying that he was prepared to supply him with a large number of watches on credit and adding that he would be prepared to take back and credit him with those watches which, for one reason or another, he could not successfully sell. The defendant agreed to this arrangement and thereafter Sherida regularly supplied him with watches on credit, either delivering them to him personally when he called at Penang or sending him the watches by registered post. According to the defendant, on three occasions — the 17th May, 1954, the 28th March, 1955 and the 23rd June, 1955 — he returned quantities of watches to Sherida. The defendant stated that the whole business between him and Sherida was done on a basis of mutual trust and that on none of these occasions did Sherida give him any receipt or acknowledgment for the watches he returned to him. Sherida, unfortunately, died on the 29th July, 1955. It is apparent from the admitted bundle of documents that subsequent to the 29th July, 1955, the defendant failed to meet a number of post-dated cheques issued by him in favour of the plaintiff firm and correspondence passed between the parties and between the defendant and solicitors acting on behalf of the plaintiff firm. On or about the 5th November, 1955, a full statement of account of the moneys allegedly due by the defendant to the plaintiff firm was sent by the plaintiffs' solicitors to the defendant. Subsequently the defendant alleged that he had not been credited in that statement of account with the value of the two consignments of watches allegedly returned by him to Sherida. As a result proceedings were instituted by the surviving partner of the plaintiff firm.

The return of the watches to the value of $23,414 by the defendant to Sherida on the 17th May, 1954, is, in fact, admitted by the plaintiff firm. Itemised entries for that day, the 17th May, 1954, made in both the plaintiff firm's Stock Book and Day Book in Sherida's own handwriting, clearly account for and establish the return of these watches by the defendant and, indeed, credit for that full amount was given to the defendant in the statement of account furnished to him, to which I have referred, showing a balance of $52,887.50 claimed as still due and owing.

The dispute between the parties lies solely in respect of the two consignments allegedly returned by the defendant to Sherida on the 28th March, 1955, and the 23rd June, 1955, respectively.

The defendant stated that on the afternoon of the 28th March, 1955, Sherida came to his shop. After a general conversation about business the defendant told him that he had a number of watches which he could not sell and which he wanted to return to him. Sherida agreed to take over the watches and credit the defendant for their value. Particulars of the watches to be returned were then prepared by the defendant's part-time accounts clerk, one Yim Chen Yoon, and, after checking, entered by the clerk, in Chinese characters, in the defendant's accounts book. Sherida then asked the defendant for a bag in which to take away the watches. The defendant's shop was divided into two parts, half of which was used by the defendant and the other half by another person who dealt with the sale of leather bags, etc. The defendant then borrowed a bag from one Tan Eng Kiat, a shop assistant employed in the leather bag part of the shop, and the watches were then put into the bag in the presence of the defendant, Yim Chen Yoon and Tan Eng Kiat. The defendant's evidence in this matter was corroborated by the testimony of Yim Chen Yoon and Tan Eng Kiat. Yim Chen Yoon further produced the accounts book showing in

detail the number, makes and value of the watches then allegedly returned — 1,143 watches to a total value of $26,440.

Similar evidence is given by the defendant and the same two witnesses in respect of 787 watches valuing $19,398 allegedly returned to Sherida by the defendant on the 23rd June, 1955. Again, a bag was borrowed from Tan Eng Kiat and the watches put into the bag in his presence. Full details of the watches were again recorded at the time by the accounts clerk, Yim Chen Yoon in the accounts book produced in evidence. The defendant reiterated that he received no receipt or acknowledgment from Sherida for the watches he then returned, Sherida simply stating that he would credit his account with their value. On this latter occasion, it is said that the defendant bought a fresh stock of watches from Sherida and that a balance of account was struck showing a debit balance against the defendant of $7,075. The defendant then produced a number of cheque books and asked one Choong Seng Tuck, a fellow dealer in watches who happened to be in the shop at the time, to write out seven cheques to the total value of $7,075. The defendant said he asked Choong Seng Tuck to write the cheques because he himself did not know English well. He then signed the cheques and handed them to Sherida, together with the returned watches which had been duly deposited in the leather bag borrowed for the occasion from Tan Eng Kiat. The evidence as to this transaction, as I have said, is given by the defendant, Yim Chen Yoon, Tan Eng Kiat and Choong Seng Tuck. It further purports to be corroborated by the written entries made at the time in the accounts book, in Chinese characters, of the watches returned and the striking of the balance of account.

Mr. Sherida is now dead and the plaintiff firm's case, of necessity, rests and must rest on its own account books made at the time in the ordinary course of business and on the fact that although a credit entry has been made in their books — the Stock Book and the Day Book — in respect of the watches returned on the 17th May, 1954, no such entries have been made in respect of the watches allegedly returned on the 28th March, 1955 and the 23rd June, 1955.

The case is one that has caused me a great deal of anxious consideration. In such cases it is, of course, sometimes possible for a Court to say, by reason of the manner in which a witness has given his evidence, or his demeanour, or proved inconsistencies and discrepancies in his testimony as against other evidence the truth of which has been established beyond doubt, that the evidence of such a witness cannot, or ought not, to be believed. Mr. Hanbury-Sparrow, for the plaintiffs, has invited me to make such a finding in respect of the defendant and his witnesses. In my view it would be wholly unfair and improper for me to do so. I saw and heard nothing in the evidence given by the defendant and his witnesses that would, in my view, justify me in saying that all or any one of them was lying.

On the other hand there are certain factors in this case that clearly speak for themselves On his own admission, and on the face of letters written at his instance and contained in the admitted bundle of documents, the defendant for some time past has been in a state of some financial difficulty. Many, if not all, of the seven post-dated cheques given by him were either dishonoured on presentation or stopped by the defendant himself. Other post-dated cheques, produced in evidence, and drawn by the defendant in favour of the plaintiff firm, were also dishonoured on presentation or withdrawn by the defendant himself before presentation and fresh post-dated cheques issued by him in substitution therefor. It is suggested that the defendant's sole reason for defending the claim is that he is not in a position to pay.

No acknowledgment or receipt for the watches allegedly returned has been produced in evidence by the defendant, and whilst the entries made in the defendant's accounts book are clearly admissible in evidence they, and the oral evidence as to the circumstances in which they were made, are clearly open to the obvious comment that they have been carefully concocted and prepared for the sole purpose of defending this action.

The defendant's case is that no receipts were given by Sherida because the whole business between them was done on the basis of mutual trust and confidence. It is this fact which, to my mind, militates against the defendant. It is apparent from the books produced in evidence that on the first occasion, the 17th May, 1954, when watches were returned by the defendant to Sherida, most careful and detailed entries were made by Sherida in both his Day Book and his Stock Book. It was admitted by the defendant that on both the dates the watches were returned by him to Sherida, namely, the 28th March, 1955, and the 23rd June, 1955, he also purchased a number of

watches from Sherida. Full details of these watches were entered by Sherida, in the ordinary course of his business, in both the Day Book and the Stock Book. If, in fact, watches were returned to him on these dates it does seem to me remarkable that no entry was made by him in these books in the same way as on the previous occasion of the 17th May, 1954, when watches were returned to him. These books were regularly kept by him up to the date of his sudden death on the 29th July, 1955. There is no reason whatsoever to believe that Sherida was other than an honest man, and I find it impossible to believe that his omission on one or both occasions to record details of the watches returned, if, in fact, they were returned, was due to a mere lapse of memory; particularly having regard to the fact that he had recorded on both these dates in both his Day Book and Stock Book full details of watches sold by him to the defendant, so that if, in fact, watches had been returned to him on those dates the incidents and details of that return would be fresh in his memory.

The burden of proving the return of these watches rests upon the defendant. On the balance of probabilities I am impelled to the conclusion that the defendant has failed to discharge that burden of proof. There must accordingly be judgment for the plaintiffs for the residue of the amount claimed, being $45,738 together with the sum of $9.10, being an admitted and incidental amount in respect of certain Bank and cable charges, together with costs on the higher scale.

The stay of execution in respect of the $7,158.60 to be removed.

Judgment for the plaintiffs.

Solicitors: *Presgrave & Matthews; Chew Choon Poon.*

GOH LIONG LAM & ORS. v. REG.

[C.C.A. (Whyatt C.J., Tan Ah Tah and Chua JJ.) March 10, 1958]

[Singapore — Criminal Appeal No. 31 of 1957]

Evidence — Child witness — Unsworn evidence — Corroboration necessary — Direction to jury treating as corroborative evidence which is not — Ground for quashing conviction.

In the absence of any local statutory provision corresponding to that in force in England, the acceptance of the unsworn evidence of a child should be subject to the same principles or rules of practice as apply to the acceptance of the evidence of accomplices. *R. v. Velayuthan*(3) applied.

Where there is a sufficient warning given by the trial Judge but in the summing-up matters are suggested as being corroborative which in fact are no corroboration at all then the conviction may be quashed by the Court of Criminal Appeal. *R. v. Phillips*(2) followed.

[**Editorial Note**: The absence of corroboration is not by itself a fatal objection to the validity of the conviction, but the appellate Court will scrutinize the record very carefully, because it is always an extreme thing to convict anyone on an unsworn evidence. *per* Murray-Aynsley C.J. in *X.Y. v. R.*, (1950) M.L.J. 51.]

Cases referred to:—

(1) *R. v. Baskerville*, (1916) 2 K.B. 658; 12 Cr.App.R. 81.

(2) *R. v. Phillips*, (1924), 18 Cr.App.R. 115.

(3) *R. v. Velayuthan* (1935) M.L.J. 277.

COURT OF CRIMINAL APPEAL.

David Marshall for the 1st and 3rd appellant.

L. Rayner for the 2nd appellant.

J. B. Jeyaratnam (Crown Counsel) for the respondent.

The judgment of the Court was delivered by —

Whyatt C.J.: — The three appellants were convicted at the Assizes of the murder of Chan Eng Hor on the 27th June, 1957. They now appeal against conviction.

The Crown's case was that the first appellant, Goh Liong Lam, plunged a bearing scraper into the back of Chan Eng Hor, an itinerant medicine vendor, while he was walking at about 6.30 p.m. on the 27th June, 1957 with his young daughter Chan Fong Chan, aged 10 years, along a path off Balestier Road and that the second appellant, Woon Ah Kiew and the third appellant, Yong Ah Soy were near to the scene of the crime and that it was the common intention of all the three appellants, together with others, to kill Chan Eng Hor.

The main evidence called by the Crown, apart from the evidence of Chan Fong Chan the daughter of the murdered man, was that of accomplices. One of such accomplices was Arthur Ng Soon Huat, a boy of 14 years of age.

Arthur Ng Soon Huat's evidence was that he was with the second appellant and the third appellant on six successive days ending with the 27th June, 1957 when arrangements were made and steps were taken towards killing Chan Eng Hor and that he was with the first appellant, when the murder was actually committed. He said that he was just behind the first appellant, both riding bicycles, when the first appellant stabbed Chan Eng Hor in the back with a bearing